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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

In the Matter of )  
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Amendment of Part 90 of the )  
Commission's Rules to Facilitate Future )  
Development of SMR Systems in the 800 )  
MHz Frequency Band )

PR Docket No. 93-144

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**SUPPLEMENTAL COMMENTS BY MOTOROLA, INC.**

Motorola, Inc. hereby submits its supplemental comments on the comparable facilities that should be provided to incumbent 800 MHz SMR systems that must be retuned by wide-area SMR licensees. On September 18, 1995, the Commission's Wireless Telecommunications Bureau requested that interested parties file additional comments on the comparable facilities issues for the Bureau to consider as it develops its report to the Commission. Motorola has been an active participant throughout these proceedings and is pleased to have another opportunity to share its views with the Commission.

**I. INTRODUCTION**

Throughout this proceeding,<sup>1</sup> Motorola has consistently supported the rights of incumbent licensees to reasonable safeguards and compensation if they must be retuned

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<sup>1</sup> See Comments of Motorola, Inc., PR Docket No. 93-144, at 8-19 (filed Jan. 5, 1995); Reply Comments of Motorola, Inc., PR Docket No. 93-144, at 18-22 (filed Mar. 1, 1995).

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for the successful deployment of wide-area SMR systems. As Motorola first stated in its comments:

The Commission's goals properly recognize that improvements in wide-area SMR service should not be achieved at the expense of incumbent licensees. An orderly, fair and comprehensive transition plan is of the utmost importance. Whether retuning occurs as a result of voluntary negotiations or regulatory deadlines, the FCC must ensure that incumbents will not be harmed by implementation of auctioned wide-area SMR systems. Both existing SMR systems and private users must be fully and completely assured that their interests will be protected in any retuning process.<sup>2</sup>

Motorola still firmly believes that the interests of incumbent users must be protected as new wide-area systems are deployed.

During the past several months, Motorola has continued to work to develop a consensus proposal that will accommodate the interests of the FCC and the industry in establishing wide-area SMR policies. To this end, Motorola has met with all factions of the SMR industry and attempted to take into account the concerns of all involved. Based on these efforts, Motorola has identified a set of requirements for ensuring that incumbent SMR systems do not suffer unwarranted disruptions or costs when they are retuned by wide-area licensees. The retuning rights proposed herein strike an equitable balance between protecting the operations of local SMR operators and facilitating the deployment of new wide-area services which can compete in the growing wireless market place.

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<sup>2</sup> Comments of Motorola, Inc., PR Docket No. 93-144, at 8 (Jan. 5, 1995)(footnote omitted).

## **II. RETUNED INCUMBENTS SHOULD BE ENTITLED TO A COMPARABLE SYSTEM AND A SEAMLESS TRANSITION**

A local SMR operator whose system is retuned by a wide-area licensee should receive a comparable system and experience a seamless transition to the new facilities. The wide-area licensee would guarantee payment of all costs of retuning the incumbent, including all engineering, site and equipment expenses, as well as any additional reasonable costs. Such expenses might include FCC filing fees and the preparation of any necessary applications. In addition, incumbents would have a choice of a cash buy-out or any other mutually acceptable agreement that can be reached between the incumbent and the auction winner. These choices would allow the incumbent to either continue operations on other frequencies or accept payments in an amount agreed upon by both parties.

An incumbent that prefers to be retuned would be entitled to a comparable system which would be defined, as in the PCS context, as one that is as good as or superior to its existing system. A comparable system likely would have the following characteristics:

- The new system would have the same number of channels as the incumbent currently holds.
- The retuned frequencies would be selected so that they are compatible in a multi-channel system at the incumbent's operating location.
- The new frequencies would have co-channel users no closer than in the incumbent's current system, up to a maximum of 70 miles, and should provide the same effective service area as the existing system.

- The incumbent's base station equipment would be modified to operate on the new frequencies, and all user units would be reprogrammed/recrystallized for the new frequencies, including user control stations. In some cases, the incumbent and user equipment will not be modifiable and new equipment will be necessary.

In addition to supplying a comparable system, the wide-area licensee would be responsible for completing all activities necessary for placing the new system into operation. To ensure that a retuned incumbent's operation is not jeopardized, the wide-area licensee would be required to ensure that the transition to the new frequency is seamless -- the incumbent should not have to cease its operations during the retuning process.

Although Motorola expects that incumbents and wide-area licensees will be able to successfully negotiate retuning agreements without difficulty, parties should be strongly encouraged to attempt in good faith to resolve any disputes regarding retuning, including comparability and cost compensation, by use of alternative dispute resolution (ADR) procedures such as mediation or arbitration. The FCC has specifically considered such mechanisms in its ADR Policy Statement and encourages the use of "neutrals" to aid parties in resolving a controversy.<sup>3</sup> To this end, the parties can agree, for example, to the appointment of a neutral mediator to assist in "settlement negotiation, conciliation, facilitation, mediation, factfinding, minitrials, . . . arbitration" or any other mechanisms or combinations thereof that would facilitate an

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<sup>3</sup> See Use of the Alternative Dispute Resolution Procedures In Commission Proceedings and Proceedings In Which the Commission Is A Party, 6 FCC Rcd 5669, 5671 (1991).

agreed solution.<sup>4</sup> The costs of the alternative dispute resolution proceedings could be assessed by the arbitrator based on some reasonable standard, such as the vindication of the parties' positions.

However, if after arbitration or other ADR process parties cannot reach an agreement, they can then take their dispute to the Commission. Just as provided in the agency's PCS policies, the FCC should "presume that the parties have negotiated in good faith if they voluntarily have engaged in mediation or arbitration."<sup>5</sup> As also established in those rules, the Commission's own decision-making regarding unresolved disputes should be guided by independent estimates of the cost of a comparable system from qualified professional third parties. Such estimates should include a specification for the replacement system and the costs of providing it to the incumbent licensee; any new equipment and retuning/recrystallization needed; a statement attesting to the comparability of the proposed new system to the system it would replace; and a testing and transition plan.

As further guarantees to the incumbents, the Commission should provide a "safety net" such that no incumbent SMR licensee, under any circumstances, will be required to cease its operations unless suitable alternative facilities are identified and accepted. In addition, incumbents should not be required to be retuned more than

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<sup>4</sup> Id. at 5673 n.19.

<sup>5</sup> Redevelopment of Spectrum, Third Report and Order and Memorandum Opinion and Order, 8 FCC Rcd 6589, 6605 n.52 (1993).

once, although an incumbent may voluntarily choose to be retuned a second time. Finally, incumbents should be permitted to be retuned to frequencies in their particular eligibility pools where the wide-area licensee requiring the retuning has such spectrum available.

### III. CONCLUSION

Throughout these proceedings, Motorola has attempted to offer proposals which balance the needs of all facets of the SMR industry. In considering the needs of retuned incumbents, Motorola believes that these operators are entitled to a system comparable to that which they are currently using and a "seamless" transition to prevent disruption to their operations. Motorola urges the Commission to consider these principles as it continues to develop its plan for the 800 MHz spectrum.

Respectfully submitted,

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